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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/539,644
Filing Date: June 15, 2005
Appellant(s): HANNSMANN ET AL.

David Victor (39,867)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 25, 2010 appealing from the Office action mailed April 15, 2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

1, 16, 17, 45-47, 49, 50, 53-55, 57, 58, 61-68

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

7203966	ABURRI	4-2007
2003/0088516	REMER	4-2007

Kazuo et al., Machine Translation of JP10215242, August 11, 1998, 32 pp

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 16-17, 45-47, 49-50, 53 -55, 57-58, are rejected under 35 U.S.C. 103(a) as being unpatentable by US Patent Application 2003/0088516 issued to Remer et al. further in view of US Patent 7203966 issued to Aburri et al. (hereinafter Aburri)

As per claims 1, 47, and 55, Remer discloses a method for providing of content data to a client (move logic and data over networks to the end user or point- of service (POS) computer [0033]), comprising:

transmitting a selection of content data to a server (selection of licenses are requested by POS that access data, [0033]);

receiving, from the server, a file comprising license information and a locator for the content data, wherein the license information indicates a license status enabling the client to access the content data wherein the available content usage indicates an amount of content available to the client according to a scope of a license (The service agent first verifies that the digital signature of the retrieved POS license is valid (310). If so, the service agent compares the Node ID field of the current POS license with the Node ID of the existing license in the discovery database (330). If the Node IDs are different, then this must be a new POS license that has not yet been collected to the

discovery database. The service agent collects a copy of the new POS license into the Servicing component's discovery database (340). [0077];

Remer does not appear to explicitly disclose, receiving selection of the content data; determining whether available content usage in the license status indicates that access to the content data is permitted; providing access to the content data in response to determining that the available content usage permits access; decrementing the available content usage included in the file sent to the client reduced, at the client, by an amount of actual client usage of the content data at the client in response to providing access to the content data.

receiving selection of the content data; determining whether available content usage in the license status indicates that access to the content data is permitted; providing access to the content data in response to determining that the available content usage permits access (The license includes: a decryption key (ED) that decrypts the encrypted digital content; a description of the rights (play, copy, etc.) conferred by the license and related conditions (begin date, expiration date, number of plays, etc. [Col 3, lines 5-15]);

decrementing the available content usage included in the file sent to the client reduced, at the client, by an amount of actual client usage of the content data at the client in response to providing access to the content data. (corresponding to licenses 16 presently or formerly in the license store 38. Such state information is created by the DRM system 32 and stored in the state store 40 as necessary. For example, if a particular license 16 only allows a predetermined number of renderings of a piece of

corresponding digital content 12, the state store 40 maintains state information on how many renderings have in fact taken place in connection with such license 16 [Col 17, lines 55-69] That is, each copy/replacement license utilizes a relatively short-term expiration date instead of the original expiration date so that long-term continued use of a copy/replacement license requires periodic contact with the license synchronization server in order to update the expiration date (hereinafter "expiry") at step 2740. [Col 58, lines 35-50])

Remer and Aburri are analogous art because they are from the same field of endeavor of providing data to clients

It would have been obvious to modify the invention Remer to include the feature of Aburri. Modification allows the user to render the digital content according to the rights conferred by the license and specified in the license terms. [Col 3, lines 35-50])

As per claim 16, 49, and 57, Remer discloses the generated file comprises an XML file having a defined DTD format (The exchange of licenses may be accomplished in a number of ways. In one example implementation of the method, the exchange is accomplished by formatting an exchange license file that is in well-formed, non-validated XML described by the following DTD [0087]).

As per claim 17, 50, and 58, Aburri discloses sending, by the client, to the server a request to renew the license and make payment for the renewal in response to the client determining that the available content usage in the license status indicates that the license has expired (A purpose of such contact is to synchronize the server's license information with the user's device's license information. For example, when user next

connects to synchronization server 1402 from a computing device, e.g. 1302a, any new licenses now contained in the license store 1524 on license synchronization server 1402 will be downloaded to device 1302a and any licenses contained in license store 1510a on device 1302a not in license synchronization server 1402 license store 1524 will be uploaded to server 1402. License synchronization server 1402 may send device 1302a copy/replacement license for any licenses that device 1302a has newly uploaded to the license synchronization server. Copy/replacement licenses are stored in license store 1510a on computing device 1302a [Col 62, lines 40-55])

Remer and Aburri are analogous art because they are from the same field of endeavor of providing data to clients

It would have been obvious to modify the invention Remer to include the feature of Aburri. Modification allows the user to render the digital content according to the rights conferred by the license and specified in the license terms... [Col 3, lines 35-50])

As per claim 39, 51, and 59, Aburri discloses the usage of the content data at the client after the license status is expired at client when there is no more available content usage. (copy/replacement license may also expire, however, if a user does not connect and synchronize with the license synchronization server from a device before the expiry date of the copy/replacement license. [Col 63-Col 64])

Remer and Aburri are analogous art because they are from the same field of endeavor of providing data to clients

It would have been obvious to modify the invention Remer to include the feature of Aburri. Modification allows the user to render the digital content according to the rights conferred by the license and specified in the license terms. [Col 3, lines 35-50])

As per claim 45, 53, and 61, Aburri discloses the available content usage indicates a fixed number of allowed play, wherein the license status is expired after the content is rendered the fixed number of allowed playbacks (The license includes: a decryption key (ED) that decrypts the encrypted digital content; a description of the rights (play, copy, etc.) conferred by the license and related conditions (begin date, expiration date, number of plays, etc. [Col 3, lines 5-15])

Remer and Aburri are analogous art because they are from the same field of endeavor of providing data to clients

It would have been obvious to modify the invention Remer to include the feature of Aburri. Modification allows the user to render the digital content according to the rights conferred by the license and specified in the license terms. [Col 3, lines 35-50])

As per claim 46, 54, and 62, Aburri discloses the available content usage indicates duration of the content playback (A copy/replacement license may expire because the end of the time period for which an original license pertains has been reached [Col 63, lines 35-40])

Remer and Aburri are analogous art because they are from the same field of endeavor of providing data to clients

It would have been obvious to modify the invention Remer to include the feature of Aburri. Modification allows the user to render the digital content according to the rights conferred by the license and specified in the license terms. [Col 3, lines 35-50])

2. Claims 40, 52, 60, 63-68 are rejected under 35 U.S.C. 103(a) as being unpatentable by US Patent Application 2003/0088516 issued to Remer et al. further in view of US Patent 7203966 issued to Aburri et al. (hereinafter Aburri) and further in view of Japanese Application 10215242 issued to Kazuo et al. (hereinafter Kazuo)

As per claim 40, 52, and 60, Kazuo discloses permitting access to the content data in response to determining that the available content usage in the license status indicates that the license has expired; tracking content usage in response to determining that the available content usage indicates that the license has expired and permitting access to the content data after the license has expired; synchronizing with the server to transmit the tracked amount of usage of the content data at the client after the license status is expired at client (delivering a usage history to a center 30 at a suitable time [0054]);

Kazuo discloses providing payment for the amount of usage of the content data after the license status is expired(A fee calculated based on a collected history is charged directly from each user's account and distributed to content provider according to utilization quantity of each contents [0054])

Remer in view of Aburri and Kazuo are analogous art because they are from the same field of endeavor of providing data to clients

It would have been obvious to modify the invention Remer in view of Aburri to include the feature of Kazuo. Modification allows the user to pay for contents based on how much it is utilized. [0054])

As per claims 63, 65 and 67, Kazuo discloses access to the content data in response to determining that the available content usage in the license status indicates that the license has expired is permitted in response to the client not being able to connect to the server, and wherein the synchronization occurs when the client is able to reconnect to the server (delivering a usage history to a center 30 at a suitable time [0054])

Remer in view of Aburri and Kazuo are analogous art because they are from the same field of endeavor of providing data to clients

It would have been obvious to modify the invention Remer in view of Aburri to include the feature of Kazuo. Modification allows the user to pay for contents based on how much it is utilized. [0054])

As per claims 64, 66 and 68, Kazuo discloses the operations further comprise: determining whether the file permits the user to continue to use the content data after the license has expired, wherein the operations of permitting access to the content data in response to determining that the license has expired and tracking content usage is performed in response to determining that the file permits the user to continue to use the content data after the license has expired (Information about utilization conditions, such as utilization charge, a payment method, the expiration date, is given to an access ticket in addition to information about access control [0054]).

Remer in view of Aburri and Kazuo are analogous art because they are from the same field of endeavor of providing data to clients

It would have been obvious to modify the invention Remer in view of Aburri to include the feature of Kazuo. Modification allows the user to pay for contents based on how much it is utilized. [0054])

(10) Response to Argument

A. Rejection under 35 U.S.C. §103

Claims 1, 16, 45-49, 53-55, 57, 61, and 62

(a) Appellants argue that “there is no teaching of the claim requirement of permitting access to the content data in response to determining that the available content usage in the license status indicates that the license has expired and then tracking post-expiration content usage.” (Page 17, Appeal Brief)

Examiner appreciates the interpretative description given by Appellants in response, but would like to point out the actual claim language: “permitting access to the content data in response to determining that the available content usage in the license status indicates that the license has expired; tracking content usage in response to determining that the available content usage indicates that the license has expired and permitting access to the content data after the license has expired.”

Examiner points out that the sections of the reference that are cited in the rejection are for the convenience of the Appellant, yet the reference as a whole must be considered.

In the rejection, Kazuo is shown to clearly state that a delivering a usage history to a center 30 at a suitable time [0054]

Kazuo, when considered as a whole, discloses permitting access to the content data in response to determining that the available content usage in the license status indicates that the license has expired; tracking content usage in response to determining that the available content usage indicates that the license has expired and permitting access to the content data after the license has expired. Kazuo discloses on page 11, paragraph [0054]:

A user demands issue of an access ticket corresponding to his user ID of the center 30 (**). [who want to use] contents and a one] Only when characteristic data of specific contents and a user gather, **an access ticket is the digital information for making the contents available.** The center 30 publishes an access ticket according to a user's demand, and sends it to a user (**). A user uses contents using an access ticket. **Information about utilization conditions, such as a utilization charge, a payment method, the expiration date, is given to an access ticket in addition to information for access control. A user's use of contents will record the history on the token 52 according to use.** Under the present circumstances, a utilization condition in that utilization time point is also simultaneously recorded on a history. **A user is suitable timing and sends a utilization history to the center 30. The center 30 is charged based on a collected utilization history.** A fee calculated based on a collected history is charged directly from each user's account, and is distributed to the content provider 40 according to utilization quantity of each contents.

Kazuo shows that the access ticket is the digital information for making contents available and informs the user of the expiration date as well as information about utilization conditions: Information about utilization conditions, such as a utilization charge, a payment method, the expiration date, is given to an access ticket in addition to information for access control. Kazuo shows that the usage of contents is recorded

on the token. A user's use of contents will record the history on the token 52 according to use.

Kazuo shows that there are no limits to using the contents, despite having an expiration date: A user uses contents using an access ticket. Information about utilization conditions, such as a utilization charge, a payment method, the expiration date, is given to an access ticket in addition to information for access control. A user's use of contents will record the history on the token 52 according to use.

Kazuo shows that all utilization is tracked, and the user can submit the collected utilization at a time suitable for the user and the center is charged based on the collected utilization history: A user is suitable timing and sends a utilization history to the center 30. The center 30 is charged based on a collected utilization history.

(b) Appellants further argue that "the cited discussion in Para. 54 does not teach the claim requirement of keeping track of an amount of available client usage of the content data at the client when the 'available content usage' indicates that the license has expired, where the 'available content usage' is decremented." (Page 17, of the brief)

In response to the first part of the argument, "the cited discussion in Para. 54 does not teach the claim requirement of keeping track of an amount of available client usage of the content data at the client when the 'available content usage' indicates that the license has expired ", Examiner appreciates the interpretative description given by Appellants in response, but would like to point out the actual claim language: "tracking content usage in response to determining that the available content usage indicates that

the license has expired and permitting access to the content data after the license has expired”

As Kazuo has shown above, there are no limits to using the contents, despite having an expiration date: A user uses contents using an access ticket. Information about utilization conditions, such as a utilization charge, a payment method, the expiration date, is given to an access ticket in addition to information for access control. A user's use of contents will record the history on the token 52 according to use.

Kazuo shows that all utilization is tracked, and the user can submit the collected utilization at a time suitable for the user and the center is charged based on the collected utilization history: A user is suitable timing and sends a utilization history to the center 30. The center 30 is charged based on a collected utilization history.

In response to the second part of Appellants argument that “the ‘available content usage’ indicates that the license has expired, where the ‘available content usage’ is decremented”, Examiner would like to point out features pointed out by the Appellants in Appeal Brief on Page 10:

In step 422 the rendering application program updates the license information stored in the local license database by calling the common license client API. For example if the license encompasses **the fixed number of playbacks of the content data the remaining number of playbacks is decremented** accordingly by the common license client. **When the license has been used up renewal of the license is requested in step 424 from the client.** (Appellants specification, Page 12, lines 1-9]

According to the cited paragraph used by Appellants to support the claim limitation for “‘available content usage’ is decremented,” the number of playbacks are fixed and when the license is used up, renewal of the license is requested from the

client. This is contrary to appellants alleged argument that the claim requirement of keeping track of an amount of available client usage of the content data at the client when the 'available content usage' indicates that the license has expired, where the 'available content usage' is decremented." (Page 17, of the brief).

(c) Appellants further argue that Kazuo does not teach the claim requirement of providing payment for an amount of usage after the 'available content usage' indicates that the license has expired which is decremented in response to providing access to the content. (Page 18, Appeal Brief)

In response to Appellants argument, Examiner would like to point out that the features that appellant relies on (providing payment for an amount of usage after the 'available content usage' indicates that the license has expired which is decremented in response to providing access to the content.) are not recited in the claims.

Kazuo does disclose providing payment for the amount of usage of the content data after the license status is expired as "A fee calculated based on a collected history is charged directly from each user's account and distributed to content provider according to utilization quantity of each contents" [0054]

(d) Appellants further argue that "The Examiner has not cited any part of Kazuo that teaches or suggests permitting, tracking and charging for content usage that occurs after determining that the available content usage in the license is decremented to a point to indicate that license has expired." (Page 18, Appeal Brief)

In response to Appellants argument, Examiner would like to point out that the features that appellant relies on (permitting, tracking and charging for content usage that occurs after determining that the available content usage in the license is decremented to a point to indicate that license has expired.) are not recited in the claims.

Kazuo does disclose that there are no limits to using the contents, despite having an expiration date: A user uses contents using an access ticket. Information about utilization conditions, such as a utilization charge, a payment method, the expiration date, is given to an access ticket in addition to information for access control. A user's use of contents will record the history on the token 52 according to use.

Kazuo does disclose that all utilization is tracked, and the user can submit the collected utilization at a time suitable for the user and the center is charged based on the collected utilization history: A user is suitable timing and sends a utilization history to the center 30. The center 30 is charged based on a collected utilization history.

(e) Appellants further argue that "Kazuo does not teach the claim requirement of permitting access to the content data at the client in response to determining that the 'available content usage' element, which is decremented in response to content usage, indicates that the license has expired" (Page 18, Appeal Brief)

In response to Appellants arguments, Examiner would like to point out features pointed out by the Appellants in Appeal Brief on Page 10:

In step 422 the rendering application program updates the license information stored in the local license database by calling the common license client API. For

example if the license encompasses **the fixed number of playbacks of the content data the remaining number of playbacks is decremented** accordingly by the common license client. **When the license has been used up renewal of the license is requested in step 424 from the client.**

According to the cited paragraph used by Appellants to support the claim limitation for "'available content usage' is decremented," the number of playbacks are fixed and when the license is used up, renewal of the license is requested from the client. This is contrary to appellants alleged argument that the claim requirement of keeping track of an amount of available client usage of the content data at the client when the 'available content usage' indicates that the license has expired, where the 'available content usage' is decremented." (Page 17, of the brief).

(f) Appellants further argue that "Kazuo discusses tracking in general, not with respect to an expired license as claimed" (Page 18, Appeal Brief)

Kazuo shows that there are no limits to using the contents, despite having an expiration date: A user uses contents using an access ticket. Information about utilization conditions, such as a utilization charge, a payment method, the expiration date, is given to an access ticket in addition to information for access control. A user's use of contents will record the history on the token 52 according to use.

Kazuo shows that all utilization is tracked, and the user can submit the collected utilization at a time suitable for the user and the center is charged based on the collected utilization history: A user is suitable timing and sends a utilization history to the center 30. The center 30 is charged based on a collected utilization history. Kazuo

shows that despite an expiration date, content utilization is tracked and charged to the user at a time suitable to the user.

Claims 17, 50, and 58

(g) Appellants argue that “the cited col. 62 does not teach the specific claim requirement that the client sends the server a request to renew the license and make payment for the renewal in response to the client determining that the ‘available content usage’ indicates that the license has expired” (Page 19, Appeal Brief)

Aburri shows updating of licenses of the client by synchronizing with the server: “A purpose of such contact is to synchronize the server's license information with the user's device's license information. For example, when user next connects to synchronization server 1402 from a computing device, e.g. 1302a, any new licenses now contained in the license store 1524 on license synchronization server 1402 will be downloaded to device 1302a and any licenses contained in license store 1510a on device 1302a not in license synchronization server 1402 license store 1524 will be uploaded to server 1402. License synchronization server 1402 may send device 1302a copy/replacement license for any licenses that device 1302a has newly uploaded to the license synchronization server. Copy/replacement licenses are stored in license store 1510a on computing device 1302a” [Col 62, lines 40-55]

(h) Appellants further argue that "cited col.2 discusses synchronizing with the server to get the new license info, not the client sending a request in response to determining that the available content usage indicates license has expired." (Page 19, Appeal Brief)

Aburri shows that it is necessary that the computing device have periodic contact with the server in order to update an expired license "each copy/replacement license has a second, relatively short-term expiration date instead of the original license expiration date, so that long-term continued access to content requires periodic contact with the license synchronization server in order to update the expiration date on the copy/replacement license... If a computing device does not connect with a synchronization server between the date the computing device received the copy/replacement license and the time the copy/replacement license expires, the device will be removed from the list of active, registered devices contained within a 'device store'" [Col 4, lines 23-31]

Claims 63, 65, and 67

(i) Appellants argue that "The Examiner has not cited any part of para. 54 of Kazuo that teaches permitting continued access to content after the license is indicated as expired when the user cannot connect to the server, which would allow the server to renew the license" (Page 20, Appeal Brief)

In response to Appellants argument, Examiner would like to point out that the features that appellant relies on (permitting continued access to content after the license is indicated as expired when the user cannot connect to the server, which would allow the server to renew the license) are not recited in the claims. There is no mention of renewing the license recited in the claims.

As Kazuo has shown above, there are no limits to using the contents, despite having an expiration date: A user uses contents using an access ticket. Information about utilization conditions, such as a utilization charge, a payment method, the expiration date, is given to an access ticket in addition to information for access control. A user's use of contents will record the history on the token 52 according to use.

Kazuo does show that that all utilization is tracked, and the user can submit the collected utilization at a time suitable for the user and the center is charged based on the collected utilization history: A user is suitable timing and sends a utilization history to the center 30. The center 30 is charged based on a collected utilization history.

Claims 64, 66, and 68

(i) Appellants argue that "nowhere does this cited para.54 teach or suggest determining whether the license file at the client permits the user to continue to use content after the license has expired"

Kazuo, discloses determining whether the license file at the client permits the user to continue to use content after the license has expired. Kazuo discloses on page 11, paragraph [0054]:

A user demands issue of an access ticket corresponding to his user ID of the center 30 (**). [who want to use] [contents and a one] Only when characteristic data of specific contents and a user gather, **an access ticket is the digital information for making the contents available.** The center 30 publishes an access ticket according to a user's demand, and sends it to a user (**). A user uses contents using an access ticket. **Information about utilization conditions, such as a utilization charge, a payment method, the expiration date, is given to an access ticket in addition to information for access control. A user's use of contents will record the history on the token 52 according to use.** Under the present circumstances, a utilization condition in that utilization time point is also simultaneously recorded on a history. **A user is suitable timing and sends a utilization history to the center 30. The center 30 is charged based on a collected utilization history.** A fee calculated based on a collected history is charged directly from each user's account, and is distributed to the content provider 40 according to utilization quantity of each contents.

Kazuo shows that the access ticket is the digital information for making contents available and informs the user of the expiration date as well as information about utilization conditions: Information about utilization conditions, such as a utilization charge, a payment method, the expiration date, is given to an access ticket in addition to information for access control. Kazuo shows that the usage of contents is recorded on the token. A user's use of contents will record the history on the token 52 according to use.

Kazuo shows that there are no limits to using the contents, despite having an expiration date: A user uses contents using an access ticket. Information about utilization conditions, such as a utilization charge, a payment method, the expiration date, is given to an access ticket in addition to information for access control. A user's use of contents will record the history on the token 52 according to use.

Kazuo shows that all utilization is tracked, and the user can submit the collected utilization at a time suitable for the user and the center is charged based on the collected utilization history: A user is suitable timing and sends a utilization history to the center 30. The center 30 is charged based on a collected utilization history.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Ann J Chempakaseril/

Examiner, Art Unit 2166

Conferees:

/Hosain T Alam/

Supervisory Patent Examiner, Art Unit 2166

/Cheyne D Ly/

Primary Examiner, Art Unit 2168